

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FELIPE PLANES,

Petitioner,

v.

CASE NO. 07-14000

MARY K. BERGHUIS,

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Respondent.

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**ORDER GRANTING PETITIONER'S MOTION TO AMEND AND  
DENYING PETITIONER'S MOTION FOR AN EVIDENTIARY HEARING**

On September 21, 2007, petitioner Felipe Planes filed a *pro se* habeas corpus petition under 28 U.S.C. § 2254. The habeas petition challenges Petitioner's 1991 state conviction for first-degree murder. The grounds for relief are ineffective assistance of trial and appellate counsel. Petitioner apparently raised these claims during state collateral proceedings.

Currently pending before the Court are Petitioner's motions for an evidentiary hearing and to amend the habeas petition by adding several issues, which he allegedly raised in his appeal of right. A party may amend his pleading "once as a matter of course before being served with a responsive pleading." Fed. R. Civ. P. 15 (a)(1)(A). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

Respondent has not filed a responsive pleading to date. Although an additional consideration in habeas cases is whether the amended pleading relates back in time to the date of the original pleading, *see Mayle v. Felix*, 545 U.S. 644 (2005), it appears from the face of the original petition that both the current and proposed claims may be barred by the one-year statute

of limitations. *See* 28 U.S.C. § 2244(d). Consequently, the Court finds it unnecessary to determine whether the amended petition relates back in time to the date of the initial habeas petition.

Petitioner's motion to amend the habeas petition [Doc. 4, Jan. 14, 2008] is GRANTED in the interests of justice. The Clerk of Court is ORDERED to file the amended petition, supporting brief, and appendix and to serve a copy of same on the Attorney General for the State of Michigan. Petitioner's motion for an evidentiary hearing on his claims of ineffective assistance of counsel [Doc. 5, Jan. 14, 2008] is DENIED without prejudice pending receipt of Respondent's answer and the state court record, which are due on April 17, 2008.

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: February 6, 2008

#### CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on February 6, 2008.

s/Denise Goodine  
Case Manager